

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

STATE OF OHIO,	:	Case No. 1:17-cv-403
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	Magistrate Judge Stephanie K. Bowman
vs.	:	
	:	
CHARLES HORTON,	:	
	:	
Defendant.	:	

**DECISION AND ENTRY
ADOPTING IN PART, AND DENYING IN PART,
THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 6)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on July 17, 2017, submitted a Report and Recommendation. (Doc. 6). No objections were filed.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Report and Recommendation should be and is hereby adopted in part and denied in part.

Specifically, the Report and Recommendation is adopted to the extent it recommends this Court lacks subject matter jurisdiction over this criminal action.

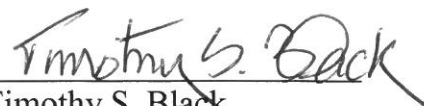
However, the Report and Recommendation is denied to the extent it recommends dismissing this action with prejudice, because the proper procedure is to remand this erroneously-removed action to the state court from which it was removed. *See* 28 U.S.C. § 1455 (b)(4) (“If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.”).

Accordingly:

1. The Report and Recommendation (Doc. 6) is **ADOPTED**;
2. This action is **REMANDED** to the state court from which it was removed for lack of subject matter jurisdiction;
3. Pursuant to 28 U.S.C. § 1915(a)(3), an appeal of this Order would not be taken in good faith; and
4. The Clerk shall enter judgment accordingly, whereupon this case is **TERMINATED** on the docket of this Court.

IT IS SO ORDERED.

Date: 10/27/17


Timothy S. Black
United States District Judge